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EPA FACES CONGRESSIONAL OPPOSITION: U.S. SENATE VOTES TO PREVENT IMPLEMENTATION OF CLEAN WATER RULE

Natural Resource (/full-blog?category=Natural+Resource), Impact! (/full-blog?category=Impact%21)

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Earlier this month, the United States Senate passed a resolution seeking to prevent the implementation of the EPA's Clean Water Rule. The resolution, which passed via a 53-44 vote gained support from both of Kentucky's senators, Majority Leader Mitch McConnell and Senator Rand Paul.^[i]

The Clean Water Act,^[ii] originally passed in 1948, but significantly amended and given its current name in 1972, established the regulatory basis for controlling the discharge of pollutants into U.S. waters and protecting the quality of surface water.^[iii] The Clean Water Rule,^[iv] added by the Environmental Protection Agency (EPA) in June 2015, expands on the Clean Water Act.^[v]



According to the EPA, this rule will “protect streams and wetlands” which the agency says, “form the foundation of our nation’s water resources.”^[vi] The rule will ultimately create federal protection for an additional three percent of waterways in the United States.^[vii] Opponents, however, argue that the new rule will hinder agriculture and energy development.^[viii] The rule, which was set to take effect on August 28, 2015,^[ix] has yet to be implemented as the U.S. Court of Appeals for the Sixth Circuit has issued a nationwide stay on the rule while litigation regarding it proceeds.^[x]

The American Farm Bureau Federation, via its “Ditch the Rule” initiative, has asserted that the rule will hinder farming practices by giving the EPA and the U.S. Army Corps of Engineers the ability to dictate farmers’ decisions regarding land-use and farming practices.^[xi] The federation argues that the new rule will hinder the competitiveness and profitability of farming operations via regulation of “puddles, ponds, ditches, [and] ephemerals” which “dot the nation’s farmland.”^[xii] Opponents also declare that this rule marks the assertion of federal authority into areas that should remain under state control.^[xiii]

Proponents of the rule, however, state that its importance lies with its ability to help ensure the protection of more waterways, which, among other things, produce drinking water.^[xiv] Senator Barbara Boxer, a Democrat from California who voted against the Senate’s resolution, asserts that doing away with the Clean Water Rule will “[put] our children and families at risk because it [would take] away protections for drinking water for one in three Americans, or 117 million people.”^[xv]

Senator Joni Ernst, a Republican from Iowa and the bill’s sponsor, stated that the legislation “is the necessary next step in pushing back against this blatant power grab by the EPA.”^[xvi] She continued, stating, “[w]e will send this to the president, where he will be forced to decide between the livelihood of our rural communities nationwide and his unchecked federal agency.”^[xvii]

President Barack Obama will more than likely veto the bill upon arrival. Thus, it is predicted that the Senate’s resolution will ultimately fail to be implemented, as Republicans in the majority have been unable to secure a two-thirds majority to make the resolution veto-proof.^[xviii]

[i] Devin Henry, *Senate Votes To Kill EPA’s Water Rule*, The Hill (Nov. 4, 2015, 12:51 PM), <http://thehill.com/policy/energy-environment/259119-senate-votes-to-kill-epas-water-rule>.

[ii] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (1972).

[iii] *Summary of the Clean Water Act*, Env’tl. Prot. Agency, <http://www2.epa.gov/laws-regulations/summary-clean-water-act> (last visited Nov. 18, 2015).

[iv] Clean Water Rule: Definition of “Waters of the United States,” 80 Fed. Reg. 37,054 (June 29, 2015) (to be codified at 33 C.F.R. pt. 328).

[v] *The Final Clean Water Rule*, Env’tl. Prot. Agency, <http://www2.epa.gov/cleanwaterrule/final-clean-water-rule> (last visited Nov. 18, 2015).

[vi] *Clean Water Rule*, Env’tl. Prot. Agency, <http://www2.epa.gov/cleanwaterrule> (last visited Nov. 18, 2015).

[vii] Amy Harder & Naftali Bendavid, *Senate Votes to Overturn EPA Water Rules*, wall St. J. (Nov. 4, 2015, 2:15 PM), <http://www.wsj.com/articles/senate-votes-to-overturn-epa-water-rules-1446664500>.

[viii] Henry, *supra* note i.

[ix] *The Final Clean Water Rule*, *supra* note v.

[x] Jonathan H. Adler, *Sixth Circuit Puts Controversial ‘Waters of the United States’ (WOTUS) Rule On Hold*, Wash. Post (Oct. 9, 2015), <https://www.washingtonpost.com/news/voikh-conspiracy/wp/2015/10/09/sixth-circuit-puts-controversial-waters-of-the-united-states-wotus-rule-on-hold/>.

[xi] Ditch The Rule, http://ditchtherule.fb.org/custom_page/its-time-to-ditch-the-rule/ (last visited Nov. 18, 2015).

[xii] *Id.*

[xiii] Harder & Bendavid, *supra* note vii.

[xiv] *Id.*

[xv] *Id.*

[xvi] Henry, *supra* note i.

[xvii] *Id.*

[xviii] *Id.*

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